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SIM & MCBURNEY  
330 UNIVERSITY AVENUE  
6TH FLOOR  
TORONTO ON M5G 1R7 CA CANADA

In re Application of  
BEITELMAN et al.  
Application No.: 10/524,873  
PCT No.: PCT/CA03/01209  
Int. Filing Date: 19 August 2003  
Priority Date: 20 August 2002  
Attorney's Docket No.: 2127-53 MIS/jb  
For: COOLING ELECTROMAGNETIC STIRRERS

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: DECISION ON PETITION  
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: UNDER 37 CFR 1.181  
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This is in response to applicant's "Petition under 37 CFR 1.181 For Withdraw Holding of Abandonment" based upon a failure to receive an Office Action filed in the United States Patent and Trademark Office (USPTO) on 22 May 2007 alleging that applicant did not receive the Notification of Missing Requirements mailed on 15 September 2005.

### **BACKGROUND**

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 15 September 2005. The notification indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicant was given two months to respond to the Notification or until 15 November 2005 with extensions of time (up to 5 months) available under 37 CFR 1.136(a). No response to the Notification of Missing Requirements was received, and thus, the application was held to be **ABANDONED** as of midnight on 15 April 2006.

No Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant. However, after a telephone discussion with the undersigned, applicant became aware of the abandoned status of the application and filed the instant petition to withdraw the holding of abandonment along with an executed declaration.

### **DISCUSSION**

Petitioner asserts that the delay was caused by nonreceipt of the Notification of Missing Requirements dated 15 September 2005. A review of the written record indicates no irregularity in the mailing of the Notification dated 15 September 2005. In the absence of any irregularities there is a strong presumption that the Notification was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notification was

not in fact received.

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement from the practitioner stating that the Office action was not received by the practitioner; (2) the practitioner's statement must attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in practitioner's statement. *See* MPEP 711.03(c) I. A. No petition fee is required.

Practitioner makes the statement that the Office action was not received by the practitioner; thus Item 1 is satisfied. However, Item (2) is not satisfied because practitioner has not made a statement attesting that a search of the file jacket and docket records indicated that the Office action was not received.

Item (3) is not satisfied. Applicant submitted a copy of "our records of received mails from the Canadian and US Patent Offices for a period of one month following the September 15, 2005 date, showing no indication of receipt of correspondence relating to this filing." The docket record provided is insufficient. It appears that applicant has only provided a copy of the mail record for the present application. In order to satisfy this item applicant must provide a copy of the firm's entire docket record for the time period in which the non-received Office action would have been entered. This is to assure that the Office action in question was not, in fact, received and mistakenly docketed to another application.

Applicant attached a copy of what appears to be the firm's mail log listing Office communications received from 15 September 2005 to 15 October 2005. However, this mail log is not sufficient to satisfy the docket records requirement. Rather, applicants must provide a copy of their office docket for the date on which a response to the Notification was due.

The Office generally requires, as the appropriate docket record for establishing nonreceipt of an Office communication, a record of all USPTO responses dues on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 15 November 2005 for the present case). MPEP 711.03(c)IA. Counsel does not indicate that the records submitted represent the docket record where the non-received office action would have been entered had it been received.

The appropriate docket record for establishing nonreceipt of an Office communication, is a record of all USPTO responses dues on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 15 November 2005 for the present case).

Thus, applicant has not provided Practitioner's statement that the Office action was not received by the practitioner and has not provided the proper showing necessary to withdraw the holding of abandonment. The petition may not be properly granted at this time.

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Cynthia M. Kratz  
Attorney Advisor  
Office of PCT Legal Administration

Telephone: (571) 272-3286  
Facsimile: (571) 272-0459